

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WORD APE, LLC, D/B/A CHOMCHOM
ROLLER,

Plaintiff,

V.

PAWICO,

Defendant.

CASE NO. 2:20-cv-01768-LK

ORDER GRANTING MOTION TO
SUBSTITUTE PARTY

This matter comes before the Court on the motion by Plaintiff Word Ape, LLC, d/b/a/ ChomChom Roller (“Word Ape”) and Cheddar Creations, Inc. to substitute Cheddar Creations for Word Ape as Plaintiff in this action. Dkt. No. 20.

Word Ape made and sold a popular pet hair removal device called the CHOMCHOM Roller which embodies one or more claims of U.S. Patent No. 8,117,706 (“the ’706 patent”). Dkt. No. 1 at 2. Word Ape maintains that “[a]t the outset of the present litigation, Word Ape was the exclusive licensee of the [’706 Patent], with the right to enforce the ’706 Patent in court and recover damages for infringement of any of its claims.” Dkt. No. 20 at 1–2. Word Ape also maintains that

1 it was the owner of the copyright for a video showing the Roller in action, which is the basis for
 2 its copyright claim in this case. *Id.* at 2. Word Ape has “since assigned all of its rights (including
 3 the right to enforce and recover damages) in the ’706 Patent and the copyright associated with the
 4 video to Cheddar Creations in an Asset Purchase Agreement between these two parties, dated
 5 December 16, 2021.” *Id.*

6 The Court GRANTS the motion to substitute Cheddar Creations as Plaintiff; provided,
 7 however, that Cheddar Creations is ORDERED to file an amended complaint within 30 days of
 8 this Order that corrects the name of the Plaintiff and provides the Court with sufficient information
 9 to determine whether Cheddar Creations has “all substantial rights” to the asserted patent. *See*
 10 *Univ. of S. Fla. Rsch. Found., Inc. v. Fujifilm Med. Sys. U.S.A., Inc.*, 19 F.4th 1315, 1320 (Fed.
 11 Cir. 2021) (“[t]o determine whether an exclusive license is tantamount to an assignment,” a court
 12 “must ascertain the intention of the parties to the license agreement and examine the substance of
 13 what was granted”) (cleaned up); *Cripps v. Life Ins. Co. of N. Am.*, 980 F.2d 1261, 1267 (9th Cir.
 14 1992) (“[N]ecessary facts not contained in the pleadings, and claims which are legally insufficient,
 15 are not established by default.”). Alternatively, the patentee may be joined to this action. *See Lone*
 16 *Star Silicon Innovations LLC v. Nanya Tech. Corp.*, 925 F.3d 1225, 1229 (Fed. Cir. 2019) (“If a
 17 party cannot bring suit in its own name, it may still bring suit along with the patentee so long as it
 18 possesses ‘exclusionary rights.’”); *see also Elide Fire USA Corp. v. Auto Fire Guard, LLC*, No.
 19 21-CV-00943-NYW, 2022 WL 279624, at *5 (D. Colo. Jan. 31, 2022) (“An exclusive licensee
 20 who does not possess ‘all substantial rights’ is not completely barred from bringing a patent
 21 infringement lawsuit; rather, an exclusive licensee may sue for patent infringement, so long as the
 22 exclusive licensee has joined the patentee under [35 U.S.C.] § 281.”).

23 After Cheddar Creations files its amended complaint, it may then move for default in
 24 accordance with Federal Rule of Civil Procedure 55 and Local Civil Rule 55.

1 Dated this 2nd day of September, 2022.

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4 Lauren King
5 United States District Judge
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